



October 21, 2020

SENT VIA FOIA ONLINE

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Act Request for Documents, Records, and Materials Related to the Renewal of Owens Brockway's Title V Permit

Dear Freedom of Information Officer(s):

On behalf of Verde and Oregon Environmental Council ("OEC"), Earthjustice submits this request for records described below pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the pertinent Environmental Protection Agency ("EPA" or "Agency") regulations, 40 C.F.R. § 2.100 *et seq.*

Definitions applicable to this request:

"EPA" means the Environmental Protection Agency, and any individual acting as an agent on its behalf.

"DEQ" means the Oregon Department of Environmental Quality, and any individual acting as an agent on its behalf.

"State of Oregon" means any state of Oregon government official, entity, or agency, including the Oregon Department of Environmental Quality and Attorney General's Office, and any individual acting as an agent on its behalf.

"Owens-Brockway" means the Owens-Brockway Glass Container, Inc.'s manufacturing plant located at 9710 NE Glass Plant Road, Portland, Oregon 97220.

"Communications" means electronic mail and all associated attachments, letters, faxes, in-person meetings, phone calls, text messages, or any other correspondence.

"Records" means, but is not limited to, telephone logs, minutes of meetings and a list of participants for those meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored), and materials that EPA has either created or obtained.

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Description Of Information Sought:

This FOIA request seeks:

Any and all communications, records, and actions concerning the renewal of a Title V permit for Owens-Brockway issued by DEQ on December 10, 2019, from May 1, 2018, through the date of completion of this records request. This includes any and all communications, records, and actions from May 1, 2018 through the date of completion of this records request between EPA and the following entities:

- Owens Illinois Glass, Inc. and any individual acting as an agent on its behalf, including, but not limited to, consultants and lawyers,
- Owens-Brockway Glass Container Inc. and any individual acting as an agent on its behalf, including, but not limited to, consultants and lawyers,
- the State of Oregon, and
- any external consultants, scientists, or technical experts.

Pursuant to 5 U.S.C. § 552(a)(3)(B), we ask that documents responsive to our request be provided in electronic and searchable format. Hard copies would also be acceptable. If a response is posted on FOIA online, we request prompt notification by email at abennett@earthjustice.org that responsive documents have been posted.

This request seeks responsive records in the possession, custody, or control of any EPA office, including, but not limited to, EPA's Headquarters Office, and EPA's Region 10 Office.

In the event that any requested document is claimed, or continues to be claimed, exempt from disclosure or review or otherwise withheld, we request an index or log of documents withheld, with the maximum possible identifying information that you can provide, including a description of the document withheld, its date, its location, its recipient(s), and the specific reason(s) the document is being withheld. 5 U.S.C. § 552(b). We further request that EPA make all information requested publicly available on its website. 5 U.S.C. § 552(a)(2)(D); *see also* Freedom of Information Act; Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4683 (Jan. 26, 2009) ("All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.").

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Fee Waiver Requested

We respectfully request a waiver of any fees associated with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l)(1).

FOIA mandates that agencies waive or reduce search and copying fees where the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

In addition to the statutory direction, EPA has issued regulations outlining factors that it considers in deciding whether a fee waiver is warranted: (1) the request concerns the operations or activities of government; (2) the disclosure likely will contribute to understanding of government operations or activities; (3) the disclosure will contribute significantly to the public’s understanding; and (4) the disclosure is not primarily in the requester’s commercial interest. *See* 40 C.F.R. § 2.107(l)-(3).

As one court explained, if a non-profit organization has “identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership,” then a waiver is appropriate. *Ctr. for Biological Diversity v. Office of Mgmt. & Budget*, 546 F. Supp. 2d 722, 727 (N.D. Cal. 2008) (internal quotation omitted). The information provided below demonstrates that Verde and OEC meet the required criteria and are entitled to a full fee waiver.

Verde is a nonprofit organization that is dedicated to advocating and organizing with communities to address industrial pollution and drive environmental resources into their neighborhoods in response to existing needs. OEC is a non-profit organization that works to safeguard clean air, water and environmental health in Oregon.

A full fee waiver for this FOIA request is appropriate here, as the “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of these operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(iii). This FOIA request concerns the renewal of a Title V permit for the Owens Brockway Plant after EPA did not issue an objection to the proposed permit within the 45-day review period. Owens Brockway is a massive 78-acre facility that sits between three public schools in neighborhoods that are overburdened by air pollution. State reports indicate that in 2016 Owens-Brockway emitted more than 400 pounds of lead, 22 pounds of arsenic, and 213 pounds of chromium. The facility represents one of the largest sources of lead air pollution in Oregon. Communities near this facility face serious public health risks. EPA has an obligation under the Clean Air Act to object to the issuance of a Title V permit before the end of its 45-day review period if a state submits a permit that fails to assure

compliance with all applicable Clean Air Act requirements. 42 U.S.C. § 7661d (b)(1); 40 C.F.R. § 70.8(c). The requested documents are essential for the public to gain a thorough and complete understanding of EPA's assessment of Owens Brockway's renewed Title V permit, including the monitoring, testing, and reporting conditions that necessary to assure the facility's compliance with pollution control requirements in the permit. Responsive documents will provide information underlying EPA's decision-making and afford insight into EPA's decision-making processes on a facility that is of great public interest.

Further, Verde and OEC have the expertise to analyze the requested information and the ability to convey the requested information to their members, other organizations, and the public at large in a way that will increase understanding of the government's actions concerning Owens Brockway's renewed Title V permit. Verde and OEC regularly work with experts that can analyze and interpret information obtained to assess whether a permit includes conditions that ensure that a source is meeting its pollution control requirements, which protect against unacceptable risks to human health and the environment. Verde and OEC disseminate this information to educate the public and allow increased participation in regulatory processes. To do this, Verde and OEC work actively with other nonprofit organizations, local communities, and other individuals and entities. For instance, Verde and OEC partnered with Portland Clean Air, an organization that works to address industrial pollution in Multnomah and Washington Counties, and Cully Air Action Team, an organization of community members from Portland's Cully neighborhood to submit comments on the draft Title V permit for Owens Brockway. OEC and Verde also participated in the public hearing on the draft permit held on September 19, 2018.

Verde and OEC intend to disseminate information from the requested documents about the renewal of Owens Brockway's Title V permit and the associated impacts of the conditions in the permit to assure that the facility complies with its air pollution control obligations through newsletters, web sites, action alerts, press releases, social media, and collaboration with others. They will evaluate the records disclosed and share them. These groups have the expertise and experience to evaluate this information and disseminate it appropriately. *See Friends of the Coast Fork v. United States Dep't of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997); *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases holding "statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver"). Verde and OEC are highly qualified and able to analyze the requested records and disseminate the information on this important issue to the public.

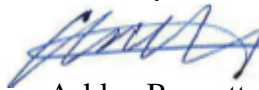
Finally, Verde and OEC are legally independent nonprofit organizations that have no commercial interest in the requested records. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requestors" (quoting legislative

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history)). Their sole interest in obtaining the records is to analyze the information, incorporate it into educational materials, and disseminate that information along with their analysis to the public. Accordingly, Verde and OEC are entitled to a fee waiver. *See* 40 C.F.R. § 2.107(l)(1)-(3).

Please do not hesitate to call me to clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at (513) 532-7432. As provided by FOIA, 5 U.S.C. § 552(a)(6)(A), we look forward to a reply within twenty working days. Thank you in advance for your assistance.

Sincerely,



Ashley Bennett
Attorney for Verde and OEC